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Attorneys for Respondent
CASINO PAUMA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

CASINO PAUMA,

and

UNITE HERE INTERNATIONAL UNION

Case No.: 21-CA-161832

**RESPONDENT CASINO PAUMA'S
EXCEPTIONS TO THE DECISIONS OF
THE ADMINISTRATIVE LAW JUDGE**

Respondent, Casino Pauma, hereby takes exception to the decision of Administrative Law Judge Robert A. Giannasi, dated July 18, 2016 ("Decision" or "ALJD").¹ Respondent's exceptions are as follows:

¹ This matter was submitted to the ALJ on stipulated facts (See Joint Motion to Submit Case on Stipulation of Facts, and Request to Forego Submission of Short Position Statements, hereinafter Stipulated Facts). "A" shall denote that the exception is taken on the basis that the portion of the Decision excepted to is unsupported by law. "B" shall denote that exception is taken on the basis that the portion of the Decision excepted to is unsupported by substantial evidence. "Supporting Brief" shall refer to Respondent's brief in support of exceptions filed herewith; should be with reference to the specific portion of the Supporting Brief and shall incorporate all arguments and evidence cited therein. Each exception shall refer to the page of the ALJD at issue followed by the lines on each page containing the disputed determination. For example, ALJD 1 (refers to page number: 1;1-5 referring to the lines in the Decision being excepted to).

1. Finding that Respondent's Handbook in "Rule 2.22, Solicitation and Distribution" interferes with protected activity under the Act. Respondent excepts to the ALJ's contention that allowing a recipient of a solicitation to reject the solicitation when such recipient experiences "discomfort or unreceptiveness" is overly broad and too subjective. (*See* ALJD 4:10-25; Stipulated Facts Paragraph 8; Supporting Brief page 5, 6). (A).
2. Finding that Respondent's Handbook violates the Act in "Rule 5.2, Conflicts of Interest" as prior approval for financial solicitations is required by Respondent's team members. (*See* ALJD 4:30-35; Stipulated Facts Paragraph 8; Supporting Brief page 5,7). (A).
3. Finding that Respondent's Handbook "Rule 2.23, Social Media Policy" as it relates to communications regarding wages, hours and working conditions; posting of photographs, use of video and audio recordings, violates the right to engage in protected concerted activities under the Act; that the employers "disclaimer language" is not sufficient to protect the employee rights; that the rule prohibits protected email communications between employees relating to their wages, hours, and working conditions in violation of the Act; that the rules restriction on photos is a violation of the Act; (*See* ALJD 4:40;5:5-40; Stipulated Facts Paragraph 8; Supporting Brief page 5,7). (A).
4. Finding that Respondent's Handbook "Rule 2.19" regarding "Conducting Personal Business" is poorly written; that the restriction on conducting personal business at work can be interpreted to prohibit employee communication re: union activities on non-work time and non-work areas; that the rule violates the Act as it does not distinguish between "work time" and "non-work time" such as lunch breaks before

- and after work; that the rule violates the Act because it can be read to deny off-duty employees the right to engage in protected activity in non-work areas while off duty; that the rule violates the Act because it is unreasonably broad. (*See* ALJD 5 (bottom of the page no lines); 6:5-35, Stipulated Facts Paragraph 8; Supporting Brief). (A).
5. Finding that Respondent's intent in formulating its rules is irrelevant. (*See* ALJD 6:Footnote 4; Stipulated Facts Paragraph 8; Supporting Brief pages 5-8). (A).
 6. Stating "Conclusions of Law" that Respondent violated the Act. (*See* ALJD 7:5-15; Stipulated Facts Paragraph 8; Supporting Brief pages 5-8). (A).
 7. By ordering Respondent to delete the rules at issue; and re-publish the Handbook without such rules; and notify employees re: same. (*See* ALJD 7:20-30; Stipulated Facts Paragraph 8; Supporting Brief pages 5-8). (A).
 8. By issuing an "Order" that Respondent must cease and desist from maintaining the Handbook language and rules referenced in subparagraphs (a)-(b) of the ALJD. (*See* ALJD 7:40; 8:5-15; Stipulated Facts Paragraph 8; Supporting Brief pages 5-8). (A).
 9. By finding that Respondent must take affirmative steps to effectuate the policies of the Act by rescinding the Handbook language referenced in subparagraph (a)-(f) of the ALJD; furnish current employees with "inserts" advising that such Handbook rules have been rescinded; post a notice at its facility attached with a decision; advise the regional director 21 days after posting of such notice that steps have been taken to comply, and by posting a notice attached as "Appendix." (*See* ALJD 8:20-40; 9:5-15; Stipulated Facts Paragraph 8; Supporting Brief pages 5-8). (A).

RESPECTFULLY SUBMITTED this

Respondent **CASINO PAUMA**

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, Jacqueline Paterno, declare and state as follows.

I am an employee of the Law Offices of Scott Wilson, which represents Casino Pauma in the above-entitled action. My business address is 711 Eighth Avenue, Suite C, San Diego, CA 92101.

I am a citizen of the United States and reside in San Diego County, California. I am over the age of eighteen (18) years and not a party to the within case or proceeding.

On August 29, 2016, I served a copy by email of the following documents:

EXCEPTIONS TO THE DECISIONS OF THE ADMINISTRATIVE LAW JUDGE

on the parties to the action and/or their attorney of record via email addressed as follows:

Jean.Libby@nlrb.gov

Kristin Martin

klm@dcbsf.com

I declare the above to be true under penalty of perjury. This Declaration is signed on August 29, 2016, in San Diego, California.

LAW OFFICES OF SCOTT A. WILSON

By: /s/ Jacqueline Paterno
Jacqueline Paterno